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## CITY OF CAMBRIDGE

Office of the City Solicitor  
795 Massachusetts Avenue  
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November 25, 2019

Louis A. DePasquale  
City Manager  
City of Cambridge  
795 Massachusetts Avenue, City Hall  
Cambridge, Massachusetts 02139

**Re: Awaiting Report 19-122/Order No. 9-37 of June 30, 2019: Report on Obtaining a Legal Opinion Regarding the License Commission's Authority with Regard to the Issuance, Denial, Suspension or Revocation of Liquor Licenses and Who Has the Legal Authority to Direct Ongoing Litigation Involving the License Commission**

Dear Mr. DePasquale:

I write in response to the above-referenced Awaiting Report seeking a legal opinion regarding the License Commission's authority with regard to: 1) the issuance, denial, suspension, or revocation of liquor licenses; and 2) who has the legal authority to direct ongoing litigation involving the License Commission.

As explained in more detail below, the Cambridge Board of License Commissioners (the "License Commission") has the exclusive authority pursuant to a Special Act enacted by the Massachusetts Legislature in 1919, and thereafter amended in 1922 and 1949, to issue, deny, suspend, or revoke any license issued under G. L. c. 138 (the "Liquor Control Act"), i.e., licenses for the sale of alcoholic beverages. See St. 1919, c. 83 as amended by St. 1922, c. 95, as amended by St. 1949, c. 84 (the "Special Act"). The License Commission is a quasi-judicial body, since it makes determinations concerning the legal rights, duties or privileges of specifically named persons and entities, and its decisions may be appealed.

Under the City's Plan E Charter, the City Manager has and possesses "... all the powers, rights and duties, other than legislative, had possessed or exercised, immediately prior to the adoption of [Plan E] by the mayor ... and is required to "... supervise the administration of the city ...", and to "... make all appointments and removals in the departments ... of the city for

which he is responsible. . . .” G. L. c. 43, § 104; Allen v. City of Cambridge, 316 Mass. 351, 352 (1944).

Where a decision of a quasi-judicial agency such as the License Commission, the Board of Zoning Appeals, the Planning Board, or other such quasi-judicial boards and commissions of the City are challenged, the City Solicitor, who is appointed by the City Manager, and that board or commission as the client, have the authority to direct the litigation for the purpose of defending the decision in court or before the adjudicatory tribunal to which the decision has been appealed. Therefore, in the case of the License Commission, the City Solicitor, and as explained in more detail below, depending upon the issues involved, the City Manager and the License Commission have the legal authority to direct litigation involving the License Commission.

## I. BACKGROUND AND AUTHORITY.

### A. Creation and Authority of the License Commission

The License Commission was created by the Special Act as amended, and is responsible for the issuance, suspension and revocation of licenses for the sale of alcohol to be consumed on or off premises, licenses for restaurants and cafes and similar establishments where food is provided, entertainment licenses, hotel and inn licenses, hackney driver and hackney vehicle licenses, livery driver and livery vehicle licenses, pawnbroker licenses, and auctioneer licenses, among other licenses. Pursuant to the Special Act, the Chair is appointed by the City Manager and the other two members are the Police Commissioner and the Fire Chief. The License Commission Chair as department head is responsible for overseeing the Consumers’ Council and is also responsible for enforcing the provisions of Chapter 8.16–Noise Control of the Municipal Code (the “Noise Ordinance”).

In addition, the Chair of the License Commission is the Chair of the City’s Pole and Conduit Commission, which was created in 1922 by another special act of the Legislature for the purpose of overseeing the issuance of permits to utility companies for the placement of utility lines, supporting poles, and utility equipment throughout the City; the other two members of the Pole and Conduit Commission are the City Electrician and the Superintendent of Streets. St. 1922, c. 213. The Pole and Conduit Commission is also responsible for issuing permits for the installation of small cell equipment which supports wireless cellular service.

### B. Authority to Issue, Deny, Suspend or Revoke Liquor Licenses

The License Commission has the exclusive authority to issue, suspend, modify or revoke alcohol licenses in the City. Specifically, the License Commission’s Special Act provides that “. . . the authority now or hereafter vested by law in cities or towns, or in the city of Cambridge or any official thereof, to grant, issue, record, suspend or revoke any of the licenses hereinafter mentioned, shall upon its organization be exercised in said city by said board exclusively . . . .” St. 1919, c. 83, as amended by St. 1922, c. 95, as amended by St. 1949, c. 84. The Special Act further provides that “. . . said board shall have exclusive authority to grant licenses . . . under the authority of chapter one hundred and thirty-eight of the General Laws.” Id. Licenses to permit the sale of alcoholic beverages to be consumed on or off licensed premises are governed by the



provisions of G. L. c. 138. G. L. c. 138, § 2 provides, in relevant part, that: “No person shall manufacture, with intent to sell, sell or expose or keep for sale, store, transport, import or export alcoholic beverages or alcohol, except as authorized by this chapter. . . .” G. L. c. 138, § 2. G. L. c. 138, § 64 provides, in relevant part, that: “The licensing authorities after notice to the licensee and reasonable opportunity for him to be heard by them, may modify, suspend, revoke or cancel his license upon satisfactory proof that he has violated or permitted a violation of any condition thereof, or any law of the commonwealth.” G. L. c. 138, § 64. Therefore, the plain language of the Special Act gives the exclusive authority to the License Commission to issue, deny, suspend or revoke alcohol licenses in the City.

Licenses to sell alcoholic beverages are a special privilege subject to regulation and control, and for which states have especially wide latitude pursuant to the Twenty-first Amendment to the United States Constitution. Connolly v. Alcoholic Beverages Control Commission, 334 Mass. 613, 619 (1956); Opinion of the Justices, 368 Mass. 857, 861 (1975). The Liquor Control Act is clear and unambiguous in stating that there is no right to a liquor license. G. L. c. 138, § 23 provides in relevant part that “the provisions for the issue of licenses and permits imply no intention to create rights generally for persons to engage or continue in the transaction of the business authorized by the licenses or permits respectively, but are enacted with a view only to serve the public need and in such a manner as to protect the common good and, to that end, to provide, in the opinion of the licensing authorities, an adequate number of places at which the public may obtain . . . the different sorts of beverages for the sale of which provision is made.” See G. L. c. 138, § 23. Thus, a local licensing authority has discretion to determine public convenience, public need, and public good, with respect to whether to grant a license to sell alcoholic beverages. Donovan v. City of Woburn, 65 Mass. App. Ct. 375, 378–379 (2006); Ballarin, Inc. v. Licensing Board of Boston, 49 Mass. App. Ct. 506, 510–511 (2000). In determining whether to issue a license to sell alcoholic beverages, the License Commission may consider “. . . the number of existing licenses in the area and the views of the inhabitants in the area can be taken in to account . . . as well as taking into account a wide range of factors such as traffic, noise, size, the sort of operation that carries the licenses and the reputation of the applicant.” Ballarin, 49 Mass. App. Ct. at 511. Therefore, the procedure and the factors to be taken into consideration for the issuance of a license to sell alcoholic beverages are prescribed by the Liquor Control Act and applicable case law.

### C. The Quasi-Judicial Role of the License Commission

The authority exercised by a local agency such as the License Commission is quasi-judicial in nature because it is a local agency that is required to exercise sound judgment in the proceedings before it, and because decisions of such a local agency may be examined by judicial review. Coleman v. Board of Appeal of Boston, 281 Mass. 112, 115 (1932). The Fourteenth Amendment to the United States Constitution and Articles 10 and 12 of the Massachusetts Declaration of Rights require that an agency hold an adjudicatory hearing when “the legal rights, duties or privileges of specifically named persons are required to be determined.” Cast Iron Soil Pipe Institute v. Board of State Examiners of Plumbers and Gas Fitters, 8 Mass. App. Ct. 575 (1979).



The License Commission is required to engage in a careful analysis of the applications before it in order to determine whether the applicant qualifies under the law for the license or relief it seeks. For instance, under G. L. c. 138 and case law interpreting the provisions of that statute, the License Commission is required to hold a hearing, to determine public convenience, public need, and public good, with respect to whether to grant a license to sell alcoholic beverages, and to issue a written decision where it refuses to issue or modify, suspends, revokes, cancels or denies an application. G. L. c. 138, § 23; Ballarin, Inc. v. Licensing Board of Boston, 49 Mass. App. Ct. 506, 510–511 (2000). The decisions of the License Commission on alcohol licenses must be supported by substantial evidence, i.e., evidence which a reasonable mind might accept as adequate to support a conclusion, and must not be arbitrary and capricious, or otherwise, not in accordance with law. G. L. c. 30A, § 1; Connolly v. Suffolk County Sheriff's Department, 62 Mass. App. Ct. 187, 192–193 (2004); Charlesbank Restaurant, Inc. v. Alcoholic Beverages Control Commission, 12 Mass. App. Ct. 879 (1981). The License Commission's decisions on alcohol licenses may be appealed under G. L. c. 138, § 67 to the Alcoholic Beverages Control Commission. The Alcoholic Beverages Control Commission's review of the License Commission's decisions is governed by the provisions of G. L. c. 138 and case law interpreting that statute, G. L. c. 30A, and 801 CMR 1.02. The decision of the Alcoholic Beverages Control Commission concerning a License Commission decision may be further appealed to the Superior Court pursuant to G. L. c. 30A, § 14, and ultimately to the Massachusetts Appeals Court and the Supreme Judicial Court. Thus, given the framework within which the License Commission acts, the License Commission falls squarely within the definition of quasi-judicial agency set forth by the Supreme Judicial Court in Coleman v. Board of Appeal of Boston.

The Supreme Judicial Court has stated that deliberations of a local board acting in a quasi-judicial capacity are privileged, and that the examination of the mental processes of administrative decision makers in a quasi-judicial administrative hearing is inappropriate. New England Medical Center, Inc. v. Rate Setting Commission, 384 Mass. 46, 56 (1981); Phillips v. Town of Marblehead, 148 Mass., 326, 330 (1889); States v. Morgan, 313 U.S. 409, 422 (1941). Such an inquiry is only permissible in extraordinary circumstances and where the inquiry is ordered by a court. New England Medical Center, Inc., 384 Mass. at 56.

## II. AUTHORITY TO DIRECT LITIGATION INVOLVING THE LICENSE COMMISSION

In response to the question of who has the authority to direct ongoing litigation involving the License Commission, as noted above, the City Solicitor, who is the City's attorney, the City Manager, as the City's chief executive, and the License Commission when one of its quasi-judicial decisions is being challenged, have the authority to direct litigation involving the License Commission. Specifically, the City's Plan E Charter (the "Charter") provides at G. L. c. 43, § 103 that: "The City Council shall appoint a city manager who shall be sworn to the faithful performance of his duties and who shall be the chief administrative officer of the city and shall be responsible for the administration of all departments, commissions, boards and officers of the city, whether established before its adoption of this plan or thereafter . . . ." G. L. c. 43, § 103. The City's Charter further provides at G. L. c. 43, § 104 that: "Except as otherwise specifically provided in this chapter, it shall be the duty of the city manager to act as chief conservator of the

peace within the city; to supervise the administration of the affairs of the city; to see that within the city the laws of the commonwealth and the ordinances, resolutions and regulations of the city council are faithfully executed. . . .” The City’s Charter therefore assigns executive and administrative powers to the City Manager, which includes the administration of all departments, commissions, boards and officers, including the License Commission. While the City Manager has general authority over the License Commission as a department of the City, including the administration of the License Commission’s budget, because of the quasi-judicial role of the License Commission under its Special Act and other laws, including, but not limited to, G. L. c. 138, the City Manager has no legal authority to direct or otherwise influence the License Commission to make or alter any quasi-judicial decision; indeed, to do so would compromise the propriety of the License Commission’s decisions.

In Massachusetts, the municipal attorney is the person who is responsible for handling all litigation and other legal matters involving a city or town. “Generally speaking, the municipal law officer, whatever the title, is the legal adviser to the city and town officers and departments. Town Counsel defends the city or town in all legal actions and prosecutes actions on behalf of the city or town. Town Counsel prepares or approves legal documents, gives opinions on legal points and represents the municipality, as required, before courts, county commissioners, state departments, and legislative committees.” See D.A. Randall & D.E. Franklin, *Municipal Law and Practice* (5th ed. 2006). Thus, the City Solicitor is responsible for defending all suits involving the City, and all of the City’s departments, boards, commissions, and officers, which includes the License Commission; and the City Solicitor is responsible for representing the License Commission before administrative agencies such as the Alcoholic Beverages Control Commission and in state and federal courts.

Very truly yours,



Nancy E. Glowa  
City Solicitor